IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 264 OF 2005

IN

SUMMARY SUIT NO. 3393 OF 2002

M/s.Insotherm Glass Systems.... ... Plaintiffs.

Versus

M/s. Steel Strips & Tubes Ltd.
& others..... ... ... Defendants.

Ms. Neeta Solanki i/by M/s.K.Jain & Co.,
for the Plaintiffs.

Mr. Z. Jariwala i/by M/s. Thakore Jariwala &
Associates for Defendant No.1.

Ms. Abhijeet Raje i/by M/s. Gagrat & Co.,
for Defendant Nos.2 and 3.

CORAM : A. M. KHANWILKAR, J.

DATED : JULY 26, 2005.

P.C.:

Heard learned Counsel for the parties. Perused the pleadings.

2. This application is for amendment of plaint. The Plaintiffs seek to bring on record the documents on which the Plaintiffs had referred to and relied upon

as referred to in para 9 of the Plaint. It is not in dispute that the Plaintiffs have already brought on record these documents in the affidavit in rejoinder filed in the Summons for Judgment. The proposed amendment is resisted by Defendant No.1 on the argument that copy of all documents referred to in the Schedule, Exhibit No.1 to this Chamber Summons, has not been furnished to the Defendant No.1. This objection deserves to be rejected in as much as this very documents, which are referred to in Schedule Exhibit No.1 to the Chamber Summons, have been brought on record by way of rejoinder affidavit filed by the Plaintiffs in the Summons for Judgment.

3. Counsel for Defendant Nos.2 and 3 has opposed this application on the argument that the plaint as filed does not make out any case against Defendant Nos.2 and 3. Besides, these documents were in possession of the Plaintiff when the suit was filed and nothing prevented the Plaintiffs to place the same on record. He submits that by producing these documents the cause of action of the suit will change and new case will be made out against Defendant Nos.2 and 3. There is no substance even in this objection. The plaint discloses a cause of action against Defendant Nos.2

and 3. As mentioned earlier, the Plaintiffs specifically averred in para 9 of the plaint that they would crave leave to refer to and rely upon all the communications, correspondence, postal records, fax reports, etc. as and when produced. The Plaintiffs have produced the subject documents on record along with rejoinder affidavit filed to the Summons for Judgment. Involvement of Defendant Nos.2 and 3 for seeking relief as prayed by the Plaintiffs in the suit is spelt out from the Plaint. In this view of the matter, there is no substance in the objection taken at the instance of Defendant Nos.2 and 3.

4. Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a), with no order as to costs.

5. Amendments to be carried out within two weeks from today.

Sd/-

(A. M. KHANWILKAR,J.)